

# **Exhibit A**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 AUGUST IMAGE, LLC, *et al.*,

4 Plaintiffs,

New York, N.Y.

5 v.

23 Civ. 1492 (VEC)

6 GIRARD ENTERTAINMENT & MEDIA,  
7 LLC, *et al.*,

8 Defendants.

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Conference

9 August 25, 2023  
10 10:00 a.m.

11 Before:

12 HON. VALERIE E. CAPRONI,

13 District Judge

14  
15 APPEARANCES

16  
17 DONIGER & BURROUGHS, P.C.  
Attorneys for Plaintiffs  
18 BY: STEPHEN M. DONIGER

19 MITCHELL SILBERBERG & KNUPP, LLP  
20 Attorneys for Defendants  
21 BY: ELEANOR M. LACKMAN

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1 THE COURT: The question is do you need discovery for  
2 either of those?

3 MS. LACKMAN: No, I don't think so. I don't think so,  
4 because we have the agreement and I don't think we -- I mean,  
5 the agreement is a bit challenging, but it seems clear to me  
6 that he is an employee for hire, and so therefore there is a  
7 standing issue with him there.

8 I think the fair use argument is more clear-cut, but I  
9 think the standing argument is readily explainable relatively  
10 briefly without any discovery.

11 THE COURT: So why shouldn't I enter an order to show  
12 cause on these two issues?

13 MR. DONIGER: I mean, if you would like to, that's  
14 fine. But I think that it's ultimately a -- we strongly  
15 disagree with counsel's description of these documents.

16 THE COURT: To be clear, on the fair use, there is no  
17 discovery needed, right? There is just --

18 MR. DONIGER: I don't think so.

19 THE COURT: -- a matter of looking at the post.

20 MR. DONIGER: We have certainly -- we are certainly  
21 very familiar with fair use, and there is no -- I see no world  
22 in which this falls into fair use, but counsel is free to take  
23 whatever position she wishes.

24 On the contract --

25 THE COURT: It was an article about Schwimmer's post.

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1 MR. DONIGER: No. It was an article about the  
2 *Rolling* -- about the *Friends* show being due for a reboot and  
3 that that was announced -- one of the things it mentioned is  
4 that Schwimmer had announced it. But it certainly wasn't about  
5 the photograph, and it wasn't --

6 THE COURT: No, but it was about --

7 MR. DONIGER: About the reboot of *Friends*.

8 THE COURT: And about it being announced by David  
9 Schwimmer on his Instagram feed.

10 MS. LACKMAN: Correct. We actually detail that in our  
11 second affirmative defense. We try to make it pretty  
12 straightforward. Each --

13 THE COURT: But in any event, everybody agrees that I  
14 evaluate that on the strength of the thing.

15 MR. DONIGER: And you know, I do wish that I had  
16 brought the *Rolling Stone* agreement here. I think the Court  
17 would be able to readily see that it specifically says the  
18 rights that *Rolling Stone* has; that *Rolling Stone* has the  
19 right --

20 MS. LACKMAN: I have it. I have it.

21 MR. DONIGER: May I, please?

22 THE COURT: Oh, great.

23 MS. LACKMAN: I have a copy for the Court, as well.

24 MR. DONIGER: Wonderful.

25 MS. LACKMAN: And paragraph 10 is what I was referring

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1 give the defendant a schedule for a motion for judgment on the  
2 pleadings, and we move forward from there. But if you need  
3 discovery, I don't want her to make the motion and your  
4 response being, I need discovery before I can really respond to  
5 this. So if you want discovery, what do you want?

6 MR. DONIGER: I don't believe we need discovery.

7 THE COURT: How about from the defendant?

8 MS. LACKMAN: Not on the issues that your Honor has  
9 raised on the motion for judgment on the pleadings, which we do  
10 believe would resolve this, or the order to show cause, however  
11 your Honor procedurally --

12 THE COURT: Let's do it in the ordinary course, and  
13 you will do a motion for judgment on the pleadings.

14 When would you like to make that motion?

15 MS. LACKMAN: We could probably do that in the next --  
16 probably do it in about two weeks.

17 THE COURT: All right. So I have very strong policies  
18 on this, and they go back to a time when I was an associate,  
19 so. Your motion for judgment on the pleading is due September  
20 8.

21 MS. LACKMAN: That's fine. I will be writing this, so  
22 I know of no poor associate who will have their holiday ruined.  
23 It will only be mine. And besides, this is fun.

24 THE COURT: Okay. How long do you want to respond?

25 MR. DONIGER: So you said September 8, yes?